

(2009) 12 MAD CK 0140

In the Madras High Court

Case No : OSA No"s. 274 to 277 of 2009

Scanwell Logistics (India) Pvt. Ltd.

APPELLANT

Vs

Blaiklock Compass World Transport (HK) Limited and Others

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Companies Act, 1956 — Section 454(5)

Madras High Court (Original Side) Rules, 1956 — Order 36 Rule 1

Citation : AIR 2010 Mad 125 : (2010) 153 CompCas 491

Hon'ble Judges : V. Periya Karupiah, J;M. Chockalingam, J

Bench : Division Bench

Advocate : T. Poornam, for the Appellant; T.K. Seshadri for Srinath Sridevan, for R1, Latha, for Official Liquidator-R2 and C.A. Diwhan Aryaraj, for R4 and R. Saravanakumar, for RR6 and 8, for the Respondent

Judgement

M. Chockalingam, J.—When these appeals were taken up for enquiry, the learned Senior Counsel Mr. T.K. Seshadri appearing for the first respondent raised a question as to the maintainability of the appeals.

2. On the point of maintainability, both the Counsel put forth their respective submissions.

3. According to the learned Senior Counsel for the first respondent/applicant, these appeals have been brought forth by the second respondent in Company Applications 1625 to 1628 of 2006 in C.P. No. 387 of 2003 whereby a direction to the respondents 3 to 8 to file the statement of affairs with the Official Liquidator forthwith and also a direction to the Official Liquidator to examine the conduct of the affairs of the first respondent company by respondents 3 to 8 and submit a report before the Court on the acts of misfeasance and breach of trust committed by the respondents 3 to 8 and to take cognizance of the offence committed u/s 454(5) of the Companies Act, 1956, on the basis of the prosecution of non filing of statement of affairs by the respondents 3 to 8 and also to grant interim

injunction restraining the second respondent from acting through its directors, employers, agents and representatives from alienating, transferring and disposing of any assets movable or immovable of the second respondent company pending disposal of the above company applications, and on enquiry, the learned Single Judge has made only an interim order directing the Official Liquidator to investigate about the affairs of the second respondent company who is the appellant herein, and after giving notice to the Directors of the second respondent company including the Ex-Directors of the first respondent company and also after giving opportunity to the petitioning creditors, to file a report within a period of eight weeks from the date of receipt of the order and has also posted all the applications on 14.9.2009.

4. Pointing to paragraph 20 of the common order, whereby the learned Single Judge has issued the above directions, the learned Senior Counsel for the first respondent would urge that the said order is neither a final order nor an order amounting to a judgment. The learned Senior Counsel brought to the notice of the Court Order 36 Rule 1 of the Madras High Court Original Side Rules which stipulates that a memorandum of appeal shall be accompanied by a certified copy of a decree and judgment or an order amounting to a judgment appealed from; that in the instant case, the learned Single Judge has not made any decree or judgment or an order amounting to a judgment; but, it was only an interim order directing the Official Liquidator to investigate into the affairs of the second respondent company and file a report in which neither a prejudice is caused, nor any valuable right of the appellant is invaded; and that in such circumstances, the appeals are not at all maintainable.

5. In support of his contentions, the learned Senior Counsel relied on two decisions of this Court one reported in N.P.S.N. Ramiah Nadar and Others Vs. N.K.R. Amirtharaj, and the other made by the First Bench in OSA No. 361 of 2006 (B.S. Gerg and Ors. v. The Official Liquidator and Ors.) on 19.12.2006.

6. Contrary to the above contentions, the learned Counsel for the appellant Mr. T. Poornam would submit that in the instant case, the first respondent company was ordered to be wound up in C.P. No. 387 of 2003; that the above four applications were made for the said relief's; that as far as Company Application No. 1628 of 2006 is concerned, an interim injunction restraining the second respondent, who is the appellant herein, from acting through its directors, employers, agents and representatives from alienating, transferring and disposing of any assets movable or immovable of the second respondent company was asked for; that the appellant/second respondent company was an independent legal entity, and the same was not ordered to be wound up; but, the learned Single judge has made a common order whereby a direction was issued to the Official Liquidator to investigate about the affairs of the second respondent/appellant company for which there were no reasons or circumstances available; that such a direction to the Official Liquidator to investigate into the affairs of the second respondent company, if allowed to be carried out, would certainly invade

the valuable rights of the appellant/second respondent company; that under the circumstances, it is not correct to state that the appellant cannot maintain the appeals on the pretext that the order under challenge did not amount to a judgment; that to maintain an appeal under Order 36 Rule 1 of the High Court Original Side Rules, the order to be challenged need not be a final order; that it would suffice if the order would adversely affect the valuable rights of a party; that in the instant case, the order under challenge has vitally affected the valuable rights of the appellant, and hence it has got to be treated as a judgment within the meaning of the Letters Patent, and thus the appeals are well maintainable.

7. In order to strengthen his contentions, the learned Counsel relied on a decision of the Apex Court reported in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, .

8. The Court paid its anxious consideration on the submissions made.

9. Paragraph 20 of the common order of the learned Single Judge reads as follows:

20. In such circumstances, I direct the Official Liquidator of this Court to investigate about the affairs of the second respondent company, viz., M/s. Scanwell Logistics Private Limited, especially with reference to the object of the said company and the transactions which have been taken place from the date of its incorporation viz., 28.5.2004 till date and file a report to enable this Court to pass final orders in the above applications. The petitioning creditor/applicant shall deposit an amount of Rs. 10,000/- (Rupees ten thousand only) with the Official Liquidator towards expenses relating to the said investigation within one week from this date. The Official Liquidator, after giving notice to the Directors of the second respondent company including three Ex-Directors of the first respondent company under liquidation and also after giving opportunity to the petitioning creditor, shall file his report within a period of 8 weeks from the date of receipt of copy of this order.

10. Admittedly, the appellant/second respondent company was not the company ordered to be wound up. The above applications were filed for the respective relief"s. Pending those applications, before passing the final orders, the learned Single Judge thought that it was a fit case where investigation has got to be ordered on the affairs of the second respondent company who is the appellant herein, in order to find out the veracity of the allegations made and then to proceed further. Aggrieved over the direction to the Official Liquidator to investigate into the affairs of the second respondent/appellant, the appellant has preferred these appeals.

11. The only controversy between the parties at this stage is as to the maintainability of the appeals. It is contended by the first respondent"s side that what is challenged is not an order amounting to a judgment, and hence, these appeals could not be maintained. On the contrary, it is contended by the

appellant's side that it is not necessary that the order appealed against must be a final order or amounting to a judgment; and that even if a valuable right of the appellant is vitally affected by the order, he can invoke the appellate jurisdiction under the Letters Patent. The Apex Court had an occasion to determine as to whether an appeal under Letters Patents could be preferred in a case reported in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, , and has held as follows:

113. ...

(1). ...

(2). ...

(3) Intermediary or interlocutory judgment - Most of the interlocutory orders which contain the quality of finality are clearly specified in Clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment, the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the trial Judge in a suit under Order 37 of the CPC refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the trial Judge would not amount to a judgment within the meaning of Clause 15 of the Letters Patent but will be purely an interlocutory order.

Similarly, suppose the trial Judge passes an order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of Order 43, Rule 1, though an order rejecting an application to set aside the decree passed ex parte falls within Order 43, Rule 1, Clause (d) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit

and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench.

12. From the above, it would be quite clear that so long as the orders possess the characteristics and trappings of finality in that, the orders might adversely affect the valuable rights of a party, and that would suffice to prefer an appeal. In short, it can be stated that so long as the order vitally affects the valuable rights of a party, it would undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to make an appeal to a larger Bench. The very reading of the order under challenge would clearly indicate that there was a direction given to the Official Liquidator to investigate into the affairs of the second respondent company who is the appellant herein, which was not ordered to be wound up. Whether there were reasons and circumstances to order so does not arise for consideration at this stage since what is on hand is one in respect of the maintainability. Since this Court is able to notice the order under challenge as such affects the valuable rights of the appellant, it has to be treated as a judgment within the meaning of the Letters Patent. It can be well stated that the order under challenge is appealable. This Court is of the considered opinion that the appellant can well maintain the appeals. Under the circumstances, the contentions put forth by the learned Senior Counsel for the first respondent are liable to be rejected and accordingly, rejected.

13. In the result, the appeals are maintainable. Post the appeals on 17.12.2009.